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05 UNITED STATES DISTRICT COURT  
06 WESTERN DISTRICT OF WASHINGTON  
07 AT SEATTLE

08 TAMARA L. WALBERG, ) Case No. C08-0956-JCC  
09 Plaintiff, )  
10 v. )  
11 MICHAEL J. ASTRUE, Commissioner, ) ORDER REMANDING CASE  
12 Social Security Administration, ) FOR AWARD OF BENEFITS  
13 Defendant. )  
14

15 This matter comes before the Court on the Report and Recommendation (“R&R”) of  
16 the Honorable James P. Donohue, United States Magistrate Judge (Dkt. No. 17) ,  
17 Defendant’s Objections thereto (Dkt. No. 18), and Plaintiff’s Reply (Dkt. No. 19).

18 In the R&R, Judge Donohue sets forth two independent bases for his recommendation  
19 that the Court remand the claim for an award of benefits. First, Judge Donohue found that the  
20 ALJ erred in finding, at step three of his analysis, that Plaintiff’s impairments did not meet the  
21 12.05C Listing for mental retardation. (R&R 14 (Dkt. No. 17).) Judge Donohue concluded  
22 that, taken together, Plaintiff’s IQ, educational history, social functioning, and work history,  
23 demonstrate that she met the diagnostic requirements of the listed impairment for mental  
24 retardation. (*Id.*)

25 Defendant’s objection to this first finding reiterates the same arguments that were  
26 thoroughly considered and rejected in the R&R. For example, Defendant contends that  
Plaintiff’s impairment did not meet the requirements of 12.05(c) because her low IQ tests were

01 merely “estimates” and were not considered valid. (Objections 3–4 (Dkt. No. 18).) As Judge  
02 Donohue explained, however, the ALJ’s reasons for rejecting the low IQ scores do not  
03 withstand scrutiny. In rejecting Plaintiff’s IQ scores, the ALJ relied both on Dr. Meinz’s  
04 “hunch” that the tests were not reflective of Plaintiff’s cognitive ability and on the incorrect  
05 assumption that the tests were administered during a period in which Plaintiff had relapsed  
06 into cocaine abuse. (*See* R&R 9–10 (Dkt. No. 17).) The Court agrees that these reasons for  
07 rejecting Plaintiff’s low IQ scores, which met the severity requirement for mental retardation,  
08 are not supported by substantial evidence.<sup>1</sup>

09         Second, Judge Donohue found that the ALJ also erred, at step five, because the  
10 Commissioner had failed to meet his burden of establishing that Plaintiff could perform work  
11 existing in significant numbers in the national economy. (*Id.* at 15.) The R&R explains that the  
12 ALJ failed to include all of Plaintiff’s limitations in providing a hypothetical to the vocational  
13 expert. (*Id.*) When the ALJ provided the vocational expert with a complete hypothetical that  
14 encompassed all of Plaintiff limitations, including those found by the examining physician on  
15 whom the ALJ relied to reject the low IQ scores, the expert testified that there were no jobs in  
16 the national economy that Plaintiff could perform. (*Id.*) Defendant’s objections do not address  
17 this finding by Judge Donohue, (*see* Objections (Dkt. No. 18)), and therefore, the ALJ’s error  
18 at step five provides an independent basis for the recommendation that the claim be remanded  
19 for payment of benefits, (*see* R&R 14–15 (Dkt. No. 15)).

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21         <sup>1</sup> In addition, the ALJ entirely ignored, or failed to address, Plaintiff’s low Global  
22 Assessment of a Functioning (“GAF”) scores, which provided further support for the validity  
23 of her low IQ scores. Defendant objects to this evidence, arguing that Judge Donohue  
24 improperly recommends accepting the GAF scores “as a matter of law.” (Objections 2 (Dkt.  
25 No. 18).) Defendant mischaracterizes the R&R’s assessment of the GAF scores. Judge  
26 Donohue found that the GAF assessments “offer support” for Plaintiff’s low IQ scores and  
“cast doubt” on the ALJ’s reasons for rejecting them. (R&R 10 (Dkt. No. 17).) Moreover,  
because Plaintiff’s treating psychiatrist, Dr. Hinkle, administered the GAF assessment, Dr.  
Hinkle’s opinions are, as a matter of law, given more weight than those of a nontreating  
physician. *See Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989).

01 Defendant's primary objection is that, to the extent the Court finds any harmful legal  
02 error by the ALJ, the case should be remanded for further proceedings rather than for payment  
03 of benefits. (Objections 5–9 (Dkt. No. 18).) Upon a finding of legal error, however, the Court  
04 has “discretion to remand a case either for additional evidence and findings or for an award of  
05 benefits.” *McCartey v. Massanari*, 298 F.3d 1072, 1076 (9th Cir. 2002). A remand for an  
06 award of benefits may be warranted where the record has been fully developed and further  
07 administrative proceedings would serve no useful purpose. *Smolen v. Chater*, 80 F.3d 1273,  
08 1292 (9th Cir. 1996). In light of the two independent grounds that justify reversal of the  
09 decision below, and because the record has been “fully developed,” the Court agrees with  
10 Judge Donohue that remand for an award of benefits is the appropriate relief under the  
11 circumstances.

12 Accordingly, the Court hereby ADOPTS Judge Donohue's well-reasoned Report and  
13 Recommendation, and ORDERS:

- 14 (1) The final decision of the Commissioner is REVERSED and this case is  
15 REMANDED to the Social Security Administration for the purpose of  
16 awarding benefits.
- 17 (2) The Clerk of Court is directed to send copies of this Order to the parties and to  
18 Judge Donohue.

19  
20 DATED this 18th day of June, 2009.

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John C. Coughenour

UNITED STATES DISTRICT JUDGE